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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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APR 3 1997
Federal Communications Commission
Office of Secretary

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| In the Matter of | ) | |
| | ) | |
| Requests of U S West Communications, Inc. | ) | CC 97-90 |
| for Interconnection Cost Adjustment | ) | CCB/CPD 97-12 |
| Mechanisms | ) | |

## COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox") hereby files comments in support of the Electric Lightwave, McLeodUSA Telecommunications and NEXTLINK (hereafter "Joint Petitioners") Petition for Declaratory Ruling and Contingent Petition for Preemption.[1/] The Petition presents a compelling case for Commission action to clarify that incumbent LECs ("ILECs") may not recover from competitors any "extraordinary" costs associated with compliance with the interconnection provisions of the Telecommunications Act of 1996 ("1996 Act").

Cox's interest in the Petition stems from its longtime interest in providing competitive telecommunications services through its cable television operations. Cox's plans to become a high quality, facilities-based provider of a range of telecommunications services are well known to the Commission.[2/] Cox's telecommunications subsidiaries are in the process of being certified or have been certified as CLECs in eight states, and Cox has negotiated and arbitrated several interconnection agreements with various ILECs. One of Cox's target telecommunications

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1/ The Joint Petition was filed on February 20, 1997, and the FCC requested comment by Public Notice DA97-469, released March 4, 1997.

2/ Cox has been an active participant in proceedings involving the FCC's implementation of Sections 251/252 of the 1996 Act.

markets is Arizona, where Cox has an application for CLEC authority pending and is in the process of arbitrating its interconnection arrangements with U S West before the Arizona Corporation Commission.[3/] For this reason, the Commission's disposition of the Joint Petition will affect Cox directly.

## I. U S WEST'S ATTEMPT TO MISALLOCATE ITS "COSTS" IS CONTRARY TO THE STATUTE AND FCC COMPETITION POLICY.

Cox agrees with the Joint Petitioners that U S West has a skewed perspective on competition. U S West has acknowledged in its state filings, as it must, that when states arbitrate interconnection rates or in order to satisfy the Section 271 checklist, U S West must set its interconnection charges at levels that are consistent with the requirements of Section 252(d). Nevertheless, U S West claims to have incurred additional expenditures related to compliance with the 1996 Act, above and beyond the costs of actually providing the requested interconnection or unbundled network element, that it characterizes as costs attributable to CLEC entry.[4/] U S West claims that TELRIC or other forms of forward-looking interconnection costing will not allow U S West to recover these one-time, extraordinary expenditures and that something more is required to make U S West whole. Accordingly, despite the fact that the 1996

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3/ Another Cox subsidiary has received CLEC authority in Nebraska and Cox is arbitrating interconnection with U S West in that state as well.

4/ While U S West is not particularly specific in identifying these "one-time, extraordinary costs," it claims that it has incurred over $16 million region-wide thus far for a variety of network rearrangement activities. The activities U S West identifies include software changes to allow for service assurance, capacity provisioning, billing and service delivery for CLECs. U S West also claims costs of expansion of network capacity in its tandems and interoffice facilities as well as costs of processing CLEC service orders. *See* U S West Arizona Motion at 5.

Act nowhere permits recovery of these costs from competitors, U S West is proposing to its regional state commissions that the costs should be billed either as an Interconnection Cost Adjustment Mechanism (ICAM) surcharge to CLECs or as a monthly surcharge on all access lines sold out of U S West's local and access tariffs as well as on unbundled loops or local switching ports purchased by CLECs.[5/]

As an initial matter, U S West has failed to substantiate any extraordinary costs associated with actually providing interconnection or unbundled elements or prove that they would fail to be captured in forward-looking cost studies to be filed with the state commissions. For example, the additional interoffice trunking and tandem switch capacity which U S West claims it needs to add also could be attributable to the expanding use of U S West's network for Internet access or, in the case of trunks, for non-carrier delivery of video programming.[6/] There is nothing that prevents U S West from strategically allocating these costs among competitors and other network users to achieve anti-competitive ends. Any attempt to recover these costs therefore must be supported with evidence that these costs are related to interconnection capacity requirements and are not already being recovered from customers or other users. To date U S

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5/ U S West claims for reimbursement in the state ICAM filings at issue here are substantially the same as the claims it has made to the FCC in its Local Competition proceeding, before its state commissions in interconnection arbitration proceedings and before the Eighth Circuit in the Local Competition Order appeal. U S West's apparent strategy of filing multiple, multi-jurisdictional pleadings simply wastes precious state commission resources that could be better employed by concentrating on eliminating barriers to local competition.

6/ U S West recently filed Comments in the FCC's Notice of Inquiry on Information Service Providers, CC Docket No. 96-262 in which it documented the "explosive growth" of the Internet and the need, from U S West's perspective, for ESPs to pay additional charges to U S West for their use of U S West's network and for the "substantial additional LEC investment" necessary to meet the expected growth. *See* U S West Comments at 19-20.

West has not provided its state regulators with such a showing. Until it makes that case, it cannot claim a legal entitlement to reimbursement of these "extraordinary" interconnection costs through a surcharge on its competitors.

With respect to the other "extraordinary" costs U S West seeks to recover, Congress has spoken on the matter of correct interconnection pricing. As U S West itself concedes, Congress made no provision in Section 252(d) or elsewhere in the 1996 Act for recovery of these costs from interconnecting competitors. The FCC's interconnection rules reasonably reflect Congressional intent and recognize that incumbent LECs can stifle competition by inflating the cost of essential competitive elements.[7/] As the Joint Petitioners point out, the appropriate place for U S West to recover any substantiated "extraordinary" costs is not from its competitors, but rather from its end user customers, as these costs may be permitted or approved by state regulators.[8/]

One of the most troubling aspects of the U S West state filings is that they appear designed to intimidate potential competitors and, indirectly, state regulators. Would-be competitors are being threatened by the specter of incurring extraordinary unplanned expenses that benefit only U S West. U S West claims that the 1996 Act regulatory structure creates new U S West investment expenses that must be recovered from new competitors. Apparently U S

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7/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers* at ¶ 10, CC Docket Nos. 96-98, 95-185 (released August 8, 1996) ("*Local Competition Order*"); *partially stayed pending judicial review, Iowa Utilities Board v. FCC*, Case No. 96-3321 and consolidated cases (Oct. 15, 1996) ("Stay Order").

8/ *See* Joint Petition at 9-10.

West has been a monopoly for too long to remember that developing networks, adding system interfaces and system trunking capacity is simply a cost of doing business that is recovered from its general customer user base. U S West's attitude merely perpetuates the notion, rejected in the 1996 Act, that competing carriers can be treated as "customers" rather than as co-equal carriers, legally entitled to a range of rights unavailable to the general population.

U S West also indirectly threatens state regulators with classic RBOC "*enfant terrible*" behavior. This is demonstrated by U S West's foot stomping tantrum that it will not continue to develop competitive interfaces or take other actions in support of competition unless it gets what it wants (either higher compensation from CLECs or a combination of higher rates from CLECs and end users). U S West's threats are not credible. But they stand in a long tradition of RBOC rhetoric that if they are not held harmless in a competitive marketplace, they will take their marbles and go home.

## II. EXPEDITIOUS CONSIDERATION IS REQUIRED.

The FCC should find that the U S West ICAM surcharge proposal violates the 1996 Act and the FCC's local competition rules. It is critical that state commissions facing similar strategic behavior have the benefit of the FCC's analysis on this matter. Guidance after the fact is far less helpful than creating predictable rules of the road at the outset.

Even apart from any action a state commission might choose to take, however, the FCC has the authority to deny any application for Section 271 relief. Acknowledgment by the FCC that it may take this step with respect to U S West's ICAM surcharges would serve as an

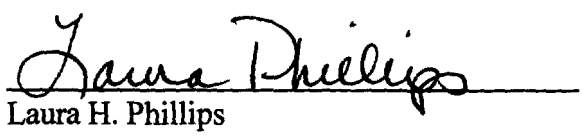
important signal to U S West to abandon its attempt to implement this anticompetitive surcharge.

## III. CONCLUSION

Cox supports the Joint Petition. It is critical that competition in the local market be given a fair opportunity to flourish. U S West has not even attempted and cannot demonstrate that its proposal is in compliance with the 1996 Act. The Commission should act to prevent U S West and other ILECs from intimidating would-be competitors and regulators by attempting to "raise the stakes" of local market entry and by demanding "hold harmless" payments in exchange for upgrading their networks.

Respectfully submitted,

**COX COMMUNICATIONS, INC.**



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April 3, 1997

## CERTIFICATE OF SERVICE

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